



October 13, 2017

Via Online Portal
(foiaonline.regulations.gov)
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 2822T
Washington, DC 20460

Via Online Portal
(foiaonline.regulations.gov)
FOIA Officer
EPA OIG
1200 Pennsylvania Avenue, NW
Mail Code 2411T
Washington, DC 20460-0001

Re: Freedom of Information Act request

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

1. Any and all records created or transmitted by or between White House staff, including but not limited to their email addresses ending in “who.eop.gov,” and Environmental Protection Agency (“EPA”) employees regarding the review and/or approval of EPA grants by John Konkus, the deputy associate administrator of the EPA Office of Public Affairs.
2. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

The timeframe for this request is January 20, 2017 through the date that searches are conducted for records responsive to this FOIA request.

We ask that you search for records from all components of the EPA that may be reasonably likely to produce responsive results, including but not limited to the Office of the Administrator, Office of the General Counsel, Office of Public Affairs, Office of Congressional and Intergovernmental Relations, and the Office of the Inspector General.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The core mission of The Protect Democracy Project, a 501(c)(3) organization, is to inform public understanding on operations and activities of the government. This request is submitted in consort with the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience.¹ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

¹ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>; Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director>.

RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-ROM.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at allison.murphy@protectdemocracy.org or (732) 655-6580 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

A handwritten signature in blue ink that reads "Allison Murphy". The signature is written in a cursive, flowing style.

Allison F. Murphy
Counsel
The Protect Democracy Project